

DAVID BURCHARD
CHAPTER 13 TRUSTEE
P.O. BOX 8059
FOSTER CITY, CA 94404
(650) 345-7801 FAX (650) 345-1514
(707) 544-5500 FAX (707) 544-0475

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

THOMAS J. CHEK
900 ARLENE WAY
NOVATO, CA 94947-6905

Debtor(s)

Chapter 13
Case No: 18-30006 DM
Date: May 16, 2018
Time: 01:10 PM
Ct rm: 450 GOLDEN GATE AVENUE
16th FLOOR - COURTROOM #17
SAN FRANCISCO, CA 94102-

**MOTION OF CHAPTER 13 TRUSTEE, DAVID BURCHARD,
TO DISMISS CASE PRIOR TO CONFIRMATION**

TO: THE ABOVE-NAMED DEBTOR(S) AND TO DEBTOR(S)' ATTORNEY OF RECORD HEREIN:

The Chapter 13 Trustee, DAVID BURCHARD, moves the Court for an order, dismissing this case for cause(s) for the reasons set forth below.

1. This Court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014, and Bankruptcy Local Rules 9013-1 and 9014-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. This Motion is based upon all documents and records on file, together with this Motion, Declaration and any such additional documents, records and evidence which may be presented.
3. Debtor(s) filed for bankruptcy under Chapter 13 on 01/04/2018.
4. This motion for dismissal is made for cause pursuant to:
11 U.S.C. § 1307(c)(1) as there is unreasonable delay that is prejudicial to creditors.
5. The cause to dismiss this case exists as it is in the best interests of creditors and the bankruptcy estate. The Trustee therefore requests the Court enter an order dismissing this case.

If you wish to oppose dismissal of this Chapter 13 case, you or your attorney must file a timely opposition to this motion no later than fourteen (14) days before the hearing set forth in the accompanying Notice of Motion. You or your attorney must also appear at the hearing date listed in the notice and present argument in opposition to this motion.

DATED: April 17, 2018

DAVID BURCHARD
DAVID BURCHARD, Chapter 13 Trustee

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**DECLARATION IN SUPPORT OF CHAPTER 13 TRUSTEE,
DAVID BURCHARD'S, MOTION TO DISMISS CASE
PRIOR TO CONFIRMATION**

I am the custodian and/or keeper of the business records referenced herein and, as such, I am qualified to certify the authenticity thereof. Additionally, I have personal knowledge of the matters stated in the Declaration. If called upon as a witness, I could and would competently testify to the facts contained herein.

After reviewing the books, records and files of the above-referenced Debtor(s), I make the following Declarations:

1. Debtor(s) filed the instant bankruptcy petition on 01/04/2018. There is unreasonable delay towards plan confirmation that is prejudicial to creditors.
2. As of the date hereof, the following fact(s) exists as cause for dismissal:

_____ Failure to make required payments to the Trustee. \$ _____ is in default under Ch. 13 Plan.
_____ Failure to attend Section 341 Meeting of Creditors scheduled on _____
 X Failure to respond to Trustee's requests – see attachment "A".

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on April 17, 2018 in Foster City, California.

Dated: April 17, 2018

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 1065 E. Hillsdale Blvd., Suite #200, Foster City, CA. On the date set forth below, I served a true and correct copy of the **Motion of Chapter 13 Trustee, David Burchard, to Dismiss Case Prior to Confirmation, the Declaration in Support of Chapter 13 Trustee, David Burchard's Motion to Dismiss Case Prior to Confirmation** and this **Certificate of Service**, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

THOMAS J. CHEK
900 ARLENE WAY
NOVATO, CA 94947-6905

The following recipients have been served via Court's Notice of Electronic Filing:

RUSSELL MARNE
russell@marne.com

Dated: April 17, 2018

BRISA RAMIREZ

BRISA RAMIREZ

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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:

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NOVATO, CA 94947-6905

Case No.: 18-30006 DM
Chapter 13

ATTACHMENT "A"

Debtor(s)

The Trustee made the following requests at least 30 days prior to the filing date of the instant motion:

1. Trustee is in receipt of debtor's bank statements for the six months prior to filing. The August 2017 Bank of America account reflects a transfer from a savings account. This asset is not listed in the debtor's schedules, nor is listed in the Statement of Financial Affairs as having been closed in the last year. Trustee requested clarification and/or amended schedules. The debtor has failed to provide the requested clarification and amended schedules.
2. Trustee is in receipt of debtor's bank statements for the six months prior to filing. The Schwab account reflects transfers from a brokerage account ending in 6029. This asset is not listed in the debtor's schedules, nor is listed in the Statement of Financial Affairs as having been closed in the last year. Trustee requested clarification and/or amended schedules. The debtor has failed to provide the requested clarification and amended schedules.
3. Trustee requested a copy of the debtor's K-1s from Roam-Tel Partners and Fore Incentives LLC for 2016 and 2017. The debtor has failed to provide the requested documents.
4. Trustee requested a signed copy of the debtor's 2014, 2015, and 2016 LLC federal income tax returns. The debtor has failed to provide the requested documents.
5. Trustee is in receipt of objection to confirmation of plan by creditor, Trinity Financial Services, LLC, filed on February 8, 2018. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. The debtor has failed to resolve said objection.
6. Trustee is in receipt of objection to confirmation of plan by creditor, Towd Point Mortgage Trust 20017-4, U.S. Bank National Association, as Indenture Trustee, filed on February 26, 2018. Trustee requested that said objection to confirmation of plan be resolved prior to confirmation. The debtor has failed to resolve said objection.

7. The debtor has listed the intention to avoid the lien of Trinity Financial Services in Section 7 of the Plan. Trustee requested that the debtor file and resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
8. The debtor has listed the intention to avoid the lien of Hillside Park East Homeowners Association in Section 7 of the Plan. Trustee requested that the debtor file and resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
9. The debtor has listed the intention to avoid the lien of Max Kemsley in Section 7 of the Plan. Trustee requested that the debtor file and resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
10. The debtor has listed the intention to avoid the lien of Wells Fargo Bank in Section 7 of the Plan. Trustee requested that the debtor file and resolve said motion prior to confirmation. The debtor has failed to resolve said motion.
11. The debtor has included special provisions in Section 7; however, the special provision box in section 1.01 has not been checked. Trustee requested an amended plan be filed which checks the correct box or removes the additional provisions. The debtor has failed to file an amended plan.
12. Section 7, Nonstandard Provisions of the debtor's plan fails to indicate which section of the plan is being modified. Trustee requested an amended plan that indicates which section is being modified by the nonstandard provisions. The debtor has failed to file an amended plan.
13. Section 3.12 of the debtor's plan fails to include the estimated amount of priority claims. Trustee requested an amended plan which includes the estimated amount of priority claims due. The debtor has failed to file an amended plan.
14. Schedule J lists a monthly expense for medical and dental expenses in the amount of \$1,000. Trustee requested verification of said expense. The debtor has failed to provide the requested verification (verification provided for only \$418.58 per month).
15. Question 13 of Form 122C-1 provides for a marital adjustment in the amount of \$3319.52. Trustee requested verification of this adjustment. The debtor has failed to provide the requested verification.
16. The debtor has included an average mortgage expense of \$9,185.47 in line 9b and 33 of Form 122C-2 while listing an average mortgage expense of \$3,241 in his plan and Schedule J. Trustee requested an amended Form 122C-2. The debtor has failed to file an amended Form 122C-2 for accuracy and consistency.
17. Schedule A/B reflects the value of the real property located at 900 Arlene Way, Novato, CA as \$543,000. Trustee requested a verification of the value. The debtor has failed to provide the requested documentation.